

ROAD & TRAIL RIGHTS-OF-WAY ACQUISITION PLAN

FISHLAKE NATIONAL FOREST

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INTRODUCTION

This document comprises the narrative section of the long-range Forest Road & Trail Rights-of-Way Acquisition Plan. The Forest Transportation Plan, the Forest Land Status Atlas, the County road declarations, and established rights-of-way contain the basic inventory from which this information was compiled and which are made a part of this plan by reference.

National Forests are units of Federally-owned land which have been withdrawn and reserved from the Federally-owned public domain land and, as such, are not subject to State and County government laws, regulations, ordinances, and codes. Roads on National Forest System land are proprietary and under the jurisdiction of the Forest Service except for public roads, private roads, and roads designated as Federal, State, County and City highways. A road for which a right-of-way has been granted by easement or permit to the State or County is a public road and under the jurisdiction of the State or County.

1. Objectives:

The Land and Resource Management Plan (1985) for the Fishlake National Forest contains general objectives for the acquisition of permanent public access to the National Forest System land administered by the U.S. Forest Service. These objectives are outlined in FSM 5460.2. In accordance with the objectives, the purposes of this plan are:

- a. to provide for the acquisition of needed road and trail rights-of-way, in a systematic order, one year in advance of planned construction schedules;
- b. to facilitate multiple use management through the acquisition of permanent public access over all roads and trails on the Forest transportation system.

The Fishlake Recreation Strategy (1994) describes the current situation, desired future condition, and proposed actions that provide the basis for the outdoor recreation program. The need for public road and trail rights-of-way across private and state lands, providing public access to the National Forest, is recognized.

Initially one objective of the Forest Land and Resource Management Plan (1985) was to obtain 68.56 miles of rights-of-way by the year 2004. This objective has been met and exceeded. Through the course of events while the mileage objective was met there still remain approximately 31 miles of recognized acquisition needs. Of these, approximately 18.2 miles are located on land proposed for exchange by the State of Utah, .3 mile is located on land proposed for exchange by a private party, and 3 miles have been submitted for County Declaration to the Sevier County. It appears desirable and prudent **not** to proceed with acquisition/purchase of the miles within the proposed State land exchange prior to consummation of said exchange. To determine and manage the needs of the Forest, an inventory/priority list (pages 10-12) has been established and will be updated as needs change and/or as rights-of-way are obtained. As it is desirable to maintain a five year inventory/action plan as a minimum, the inventory/priority list will be updated annually as needed.



2. Annual action plans shall be developed from the long-range plan and proposed in the program budgeting process.

An evaluation of the transportation system, in the late 1980's, determined the number of roads required for public use and forest management, and the roads that were not needed and/or were contributing to unwarranted resource impacts at that point in time. This evaluation resulted in a reduction of the "needed" miles of road to 1,738 miles, a reduction of over 1,200 miles. The Forest roads are described by maintenance level. The present designated transportation system has 0 miles of Level 1 roads, 1,511 miles of Level 2 roads, 199 miles of Level 3 roads, 20 miles of Level 4 roads, and 8 miles of Level 5 roads. Projections are that use will continue to increase on the existing roads, without significantly increasing the number of roads, road mileage, or location.

Roads are classified by several means but perhaps the most meaningful is by determining what type of vehicle and use the road is intended to facilitate. This classification is described as the "Maintenance Level" for the road.

- Maintenance Level 1 - Road is closed to all vehicular use.
- Maintenance Level 2 - Road is suitable for high clearance vehicles, usually four wheel drive is recommended.
- Maintenance Level 3 - Road is maintained for use by passenger cars at low speeds in good weather.
- Maintenance Level 4 - Road surfaces are upgraded for all weather use and road geometry allows moderate speeds.
- Maintenance Level 5 - Roads are generally dust free and meet design criteria for rural highways and campgrounds.

There are currently 1,189 miles of trails on the Forest. Of this number, 714 miles are open to OHV's with the remaining 475 miles reserved for non-motorized use. Some of these trails cross other ownership. There are less than five miles of trail rights-of-way recognized as needed.

Purchase of rights-of-way requires payment of just compensation to the landowner. An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data. However, the landowner must be advised of the right to have an appraisal. (General use formula: # miles X 5280' (feet per mile) X 66' (width of r/w) ÷ 43,560' (feet per acre) X \$ average cost per acre (+ incidental costs for title search, etc.) = \$ cost for r/w, this does not include appraisal costs, title insurance, or survey costs if necessary.)

The efforts to block up National Forest System land are ongoing; land exchanges, purchases, and donations may eliminate the need to acquire some rights-of-way. An aggressive effort was made to work with the counties to gain public access across private land both interior to and exterior of the Forest boundaries. Success in these efforts decreases the estimated cost of the acquisitions. This cooperative relationship will continue.

3. Assignment of Personnel and Responsibilities:

- a. Forest level. The Forest Supervisor is responsible for the overall administration and management of the Forest. Responsibilities include all elements of the Forest development transportation system of which the long-range road and trail acquisition program is a part. Adequate professional and technical skills to achieve the objectives established in the Fishlake Land and Resource Management Plan shall be maintained.

The Lands Branch Chief provides staff support to the Forest Supervisor and District Rangers for the program.

The Realty Specialist is responsible for the right-of-way workload at the Forest level and shall obtain purchasing authority to facilitate accomplishment of the acquisition objectives.

- b. District level. District Rangers have responsibility for this program. Approximately one pay period annually of District personnel time for each Ranger District may be required to implement the right-of-way acquisition program. Items to be handled at this level will include contacts with landowners, route selections, property inspections, and negotiations.
- c. Other. Regional Appraisers and Rights-of-Way Staff, should be maintained at a level that will support the Forest need. Engineering survey and drafting services will need to be maintained at a minimum level to accomplish the surveying and drafting jobs generated by the acquisition program.
- d. Training needs. Procedural training is needed by all lands staff personnel. This includes a working knowledge and background of the right-of-way system. Periodic in-service training sessions will be of value and training will be made available to participating personnel at both District and Supervisor's Office levels.

4. Acquisition Climate.

- a. Attitude of the Public in General to Rights-of-way Acquisition by the Forest Service to Access National Forest System Lands.
The attitude of the general public favors better access to the public land via the Forest road system. It can be expected there will be some areas or individuals who will resist any government actions, acquisition of public rights-of-way included.
- b. Attitude of Public Road Agencies.
Most of the public road agencies have been cooperative. We will continue to negotiate with the them as the need for acquiring rights-of-way is recognized.
- c. Attitude of Landowners.
The attitude of the majority of private landowners has been quite good. As in a. above, the overall attitude is cooperative, however resistance is encountered occasionally.

d. Settlement of Estates.

A small number of cases may be involved in settlement of estates but this does not appear to be a problem currently.

5. Particular Problems in Processing Acquisitions.

Obtaining Title Reports and Policies.

- a. Service from the local, approved, title companies is good on the whole.
- b. Outstanding third-party interests have not been a problem in the recent past, nor do we anticipate any.

6. General Priority of Acquisitions.

a. Closed roads.

There are a few cases of private landowners gating roads across private land, thus denying public access across the private land surrounded by National Forest. Primarily this occurs when landowners would rather not have public travel on roads through their lands because of vandalism, littering, and gates left open. The Forest will work with the County to provide alternate routes that meet the stipulations for declaration as a public road by the County and in so doing maintain public access to the public land.

In 1988-89 the Forest Management Team enlisted public committees to evaluate the transportation system on the Forest. The goal set for the committees was to determine which roads were required for public use and Forest management and which roads were not needed and/or were contributing to unwarranted resource impacts. The resulting reduction of 1200 miles were to be scheduled for obliteration over the next 10 year period. About 50% had been accomplished by 1993. At that time the public sentiment had changed and it was decided the "unneeded" roads would remain closed but would no longer be obliterated from the system.

b. Subdivisions.

Some mountain properties continue to be subdivided for recreation homesites. Forest efforts are directed at being aware of potential subdivision sites so emphasis can be placed on acquisition from these properties.

c. County, State, and other Federal Agency disposal.

The Forest keeps posted on any disposal transactions involving State, County, and other Federal lands. These areas are given priority to the acquisition of rights-of-way.

d. Opportunity cases.

Some opportunity case acquisitions may not appear as critical to the transportation system as other roads and trails may be, but the "ease" in which these cases can be completed makes them desirable. These cases will be given priority attention because of the willingness on the part of current landowners which may not carry through to subsequent owners. Donations from cooperative owners who

favor extension and improvement of access are sometimes available, and will be encouraged.

7. Feasible and Desirable Cost-share Possibilities with Intermingled Landowners.

While cost-sharing is desirable, there are no known opportunities on the Forest where cost-share arrangements with private landowners or contractors are appropriate. Cost-share arrangements with the counties are handled within the Forest Road Agreements.

8. Unique Problems Involving Appraisal of Right-of-way, such as special types of properties.

Changes occurring during the ten year period since the 1985 Road & Trail Rights-of-Way Acquisition Plan have eliminated some of the proposed acquisitions that appeared vital during the previous planning period. Current acquisition needs may be considered in a category described as ongoing, recognizing that various programs may produce needs in the future that may not have been recognized in previous years.

9. Other Problems.

- a. Reduction of current level personnel;
- b. Lack of sufficient funds;
- c. Timeframes needed for acquisition.

It is necessary to allow for flexibility and changes in plans that may eliminate one priority, create other, or additional priorities, and in all probability require additional time to complete the acquisition process.

10. Acquisition of r/w outside the NF boundaries.

Major access routes have been designated on the Forest Transportation Plan. These routes cross BLM, State, County, and private land. It is estimated there are +/-1000 miles of road designated as "roads providing access to the National Forest lands."

WO Amendment 5400-94-6, Effective 9/12/94: Bureau of Land Management - Forest Service Interagency Right-of-Way and Road Use Agreement. This agreement provides procedures for granting and acquiring rights by each agency from the other, necessary for road use, construction, improvement, maintenance, and transferring jurisdiction of roads. The Bureau of Land Management (BLM) land is managed as public land. The public has access to National Forest System land via existing roads and trails.

The State of Utah also allows access across State land on existing roads and trails. Often, State-owned land is administered by more than one State agency. These agencies have specific charters and authorities to manage land under their jurisdiction, but usually they are not authorized to operate as a public road agency.

Various counties have declared portions of these access routes public. The cooperative attitude has not extended to all counties within the Fishlake National Forest.

In addition to the above mentioned agreements and declarations there are also easements in existence allowing access across some private and BLM lands.



APPENDIX

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Forest Summary
Fishlake National Forest
Acquisitions '85-'94

Item	Miles to acquire by 2004*	Miles acquired as of 1994
1. Road and trail rights-of-way.	68.56	
Acquired through County Declaration.		69.75
Acquired through easements vested in USA		1.3

*No. miles specified needed to provide adequate access to the Forest in the Fishlake Forest Land & Resource Management Plan (1985).

R/W INVENTORY - 1995

(Proposed for exchange or county declaration)

T	R	Sec	#	Cty	Description/Terminal	Miles	Ownership/Status	Method of Acquisition	Dist.	Priority
19S	3W	2 36	005 ??? 005	027	trail road trail	.5 .5 1.	State State State	Ppd. exchange Ppd. exchange Ppd. exchange	D01 D01 D01	Low Low Low
21S	3W	19	399	027	Black Cedar Hill Spring trails	.2 .1	Ash Grove Ash Grove	Ppd. exchange Ppd. exchange	D01 D01	Low Low
22S	1E	2	096	041	trail	.5	State	Ppd. exchange	D04	Low
22S	3W	2	100	027		1.	State	Ppd. exchange	D01	Low
22S	4E	4, 6 16	Cty 011	041 041		2. 1.	Other Other	Cnty Decl'n Cnty Decl'n	D04 D04	Low Low
22S	4W	2 2 32 36	856 023 033 032	027	trail trail trail trail	.7 .7 .5 .5	State State State State	Ppd. exchange Ppd. exchange Ppd. exchange Ppd. exchange	D01 D01 D01 D01	Low Low Low Low
23S	1E	2 16	279 270	041		1. 1.	State State	Ppd. exchange Ppd. exchange	D04 D04	Low Low
25S	5W	32	1024 1025 1026 1027	041		1.	State	Ppd. exchange	D03	Low
26S	3E	2 2 2	509 018 213	041 041 041		1. 1. .2	State State State	Ppd. exchange Ppd. exchange Ppd. exchange	D02 D02 D02	Low Low Low
26S	5W	16 32	114 114	041 031		.7 .2	State State	Ppd. exchange Ppd. exchange	D03 D03	Low Low
26S	6W	32	118	041	(trails 056 & 057 approx. .7)	.5	State	Ppd. exchange	D03	Low
27S	2W	2 32 32	069 071 070	031 031 031		.5 1. .2	State State State	Ppd. exchange Ppd. exchange Ppd. exchange	D04 D04 D04	Low Low Low
28S	2W	32	068	031		1.	State	Ppd. exchange	D04	Low
28S	4W	2	1105	031		.2	State	Ppd. exchange	D03	Low
28S	5W	2	123	031		.2	State	Ppd. exchange	D03	Low
28S	6W	36	063	001	trail	.1	State	Ppd. exchange	D03	Low

(Private or not proposed for State Exchange)

T	R	Sec	#	Cty	Description/Termini	Miles	Ownership/Status	Method of Acquisition	Dist.	Priority
20S	3W	1 36	009 010	027 027	trail/Indian Ranch trail/Robins Valley	.5 .7	Other Other	Purchase Purchase	D01 D01	low med
24S	41/2W	18	106	027	Second Creek road	.7	Other	County Declar.	D01	high
22S	4E	28, 32	011	041	John Winch property	2.	Other	County Declar.	D04	low
25S	5W	32	1024 1025 1026 1027	041	(after adjacent St exchange)	1.	Other	County Declar.	D03	low
26S	7W	36	118	001	(Outside NF boundary) Pine Crk	1.	State	Purchase	D03	* med
29S	5W	16 16	147 164	001 001	Strawberry Flat Trail	1.5 .5	State State	Purchase Purchase	D03 D03	* high * high
29S	6W	36 36	1016 4066	031 031	Birch Lake Trail Birch Lake Trail	.7 .5	Other Other	Purchase Purchase	D03 D03	high high
30S	5W	2	068	001	Le Baron trail	.5	Other	Purchase	D03	high

*DNR charges a \$600 application fee, plus \$5 per rod up to 33' wide (trails included), and \$10 per rod for 66' wide, for a 30 year easement.

PUBLIC ROAD STATUS/COUNTY DECLARATION

Congress authorizes and appropriates funds for Forest Development Roads. Forest development roads are not public roads (FSM 7705) in the same sense as roads that are under the jurisdiction of public road agencies, such as states or counties. Forest development roads are not intended to meet the transportation needs of the public at large. Instead, they are authorized only for the administration and utilization of National Forest System land.

The Forest must determine when a public road has been established to the level and reliability that it can be counted on for fiscal integrity in regards to the expenditure of federal funds for public access requirements. The process established to review road jurisdiction and facilitate declaration of jurisdiction and public road status by county includes:

1. Identification of the existing county class "B" system.
(Review the county maps of their "B" system roads. It is important to determine county designations and resolve conflicts with the Forest inventory. Discrepancies may occur between county roads previously designated and the Forest record.)
2. Identify roads which met the criteria for declaration as public roads, and provided access to National Forest System land.
 - a. Roads in Utah must have been continuously used as public thoroughfares for the past ten years;
 - b. Roads must be located on private lands. (Counties cannot declare roads across State or Federal land public, (exception 2477)).
3. The proposal for designation as public roads should include:
 - a. Map of proposed roads
 - b. Sample declaration statement (varies by county to accomodate individual county concerns. The action may occur entirely independent of the Forest Service.)
 - c. Schedule A for proposed road maintenance. (Roads listed in schedule A include all roads intended for cooperative maintenance within the county, not just those involved in the declaration.)
4. The Forest and the County Commission meet to establish consensus on the proposed road jurisdictions and maintenance agreement.
5. Consensus obtained, the Notice of Action is posted by the county. (Posting requirements may vary by county, this action is the responsibility of the county.)
6. After signing, the county records the resolution in the recorders office.
7. After the resolution and maintenance agreement are signed, the Forest road inventory is updated to represent the changes as this is part of the record used by the Forest to declare its system and responsibilities.
8. The Forest Service and the cooperator shall meet at least once each year to review matters covered by the Forest Road Agreement and to agree on actions to implement the Agreement including, but not limited to: 1. Approval of changes in the listing of roads on Schedule A; 2. Approval of the annual maintenance plan; 3. Approval of project agreements for construction or reconstruction; and 4. Approval of transfer of jurisdiction of particular roads.

R.S. 2477

"The right-of-way for construction of highways over public lands, not reserved for public uses, is hereby granted."

This law, also known as the Mining Act of 1866, offered to grant rights-of-way to construct highways over unreserved public lands. Originally, the grant was Section 8 of a law entitled "An Act Granting Right of Way To Ditch and Canal Owners Over The Public Lands, and For Other Purposes." Several years after the Act was passed, this provision became Section 2477 of the Revised Statutes, hence the reference as R.S. 2477. Later still, the statute was recodified as 43 United States Code (U.S.C.) 932.

The law required no consent, no construction standards, no notification of construction, no document to establish the rights-of-way, and no requirements as to the management and protection of same. This law was in effect for 110 years without addition or changes until it was repealed as a part of the Federal Land Policy and Management Act (FLPMA) of 1976. FLPMA repealed the right to establish new rights-of-way, but those already established remained untouched.

Although the 1866 Act was repealed by the Federal Land Policy and Management Act in 1976, rights which preexisted the establishment of the National Forest are preserved (FSM 2734.5) The right to establish new R.S. 2477 rights-of-way on National Forest System land was lost at the time the National Forest was "reserved." Thus, only those roads constructed on the Federal land that was open to entry and appropriation under the public land laws for use as a public road, in accordance with applicable territorial or state laws, could be R.S. 2477 roads. (On the land administered by the Bureau of Land Management, establishment of R.S. 2477 rights-of-way continued until FLPMA.)

Establishment of a public road under R.S. 2477 requires three elements:

1. A road must have been established or constructed,
2. on federal land that was open to entry and appropriation under the public land laws,
3. for use as a public road in accordance with applicable territorial or state laws.

Review of historic maps (established post offices & routes), GLO survey notes, county or state records, etc. will generally indicate whether a road was constructed at a time when the federal lands were open to entry and appropriation under the public land laws. The determination of whether the road was established for public use is somewhat more complex. Record of acceptance by the appropriate public body (generally the County) is generally determinative. Where applicable state laws allowed public roads to be established by custom and usage, circumstantial evidence may be used to show the road was generally used by, and available to, the public. As with actual construction of the road, the dedication to public use, express or implied, must have occurred while the land was open to entry under the public land laws to perfect the grant under R.S. 2477.

The appropriate public body could have made acceptance through a formal action such as state statute at the time of statehood, which adopted all existing roads as public highways, or by following the required petition/dedication procedures or other provision of state laws for the establishment of public highways. Acceptance could also have occurred through an informal action. Evidence such as entries in County Road Journals which recognized a specific road as a public road, or records of expenditures for construction of maintenance by the state or county, newspaper accounts, affidavits, etc., could be evidence of informal acceptance of a public highway. The key point here is the public use over time could have been the basis to establish or create a road.

Additionally, to establish the public right-of-way under R.S. 2477 currently exists, it must be shown that there was never an abandonment of the road in accordance with applicable state laws. Some states allow for abandonment by a continuous period of non-use, generally however, a formal action is required.

Current policy and direction for administration of rights-of-way granted by R.S. 2477 are found in FSM 2734.51. In summary:

1. Use current authorities in determining whether to authorize any construction activity that expands the preexisting facility or changes the alignment by an appropriate easement.
2. Encourage the appropriate public road agency (generally the county government or highway district) to apply for a DOT or FRTA easement to document r/w secured under 43 USC 932.
3. Follow the policy developed by the Department of Interior to interpret rights granted by RS 2477. The portion of the policy applicable to other uses prior placed on BLM land prior to November 7, 1974, does not apply as the Forest Service requires special-use authorizations for utilities and other such uses.
4. Ensure the Government's servient estate does not suffer unnecessary degradation as a result of actions by the holder of the right-of-way.
5. The timber on the right-of-way remains the property of the United States and cannot be removed, converted to the holder's own use, or sold without authorization from the Forest Service.



SAMPLE

FOREST ROAD AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF AGRICULTURE,

FOREST SERVICE

AND

_____ COUNTY

Parties to Agreement: This agreement, made and entered into this _____ day of _____, 19 __, by and between the Forest Service, and _____ County, hereafter called the "cooperator."

Purpose of Agreement: The purpose of this agreement is to set forth the general terms and conditions, acceptable to the parties hereto, for the cooperative planning, survey, design, construction, reconstruction, improvement, and maintenance of certain Forest Development Roads in _____ County, State of Utah, pursuant to the provisions of 16 U.S.C. 532-538, 23 U.S.C. 205 and the regulations issued by the Secretary of Agriculture.

The Congress has, from time to time, authorized and appropriated funds for "Forest Development Roads," which are defined as those Forest roads of primary importance for the protection, administration, and utilization of the National Forests, or where necessary, for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent." Recognizing that substantial benefits will accrue to the Nation and to the State from the construction, reconstruction, improvement, maintenance, and use of certain Forest development roads and roads on the State or local road system over which the cooperator has jurisdiction, and further that such roads carry substantial volumes of public service traffic as well as National Forest traffic, and further that the cooperator has road construction, reconstruction, improvement, maintenance, and right-of-way acquisition facilities available to assist in the accomplishment of the work, it is accordingly deemed fitting and desirable to the parties hereto to express by this instrument the general terms of their mutual cooperation in that regard to achieve the maximum benefits therefrom in the public interest.

1. Intent to Cooperate.

It is the intention of the parties under this agreement to cooperate as follows:

- a. Agree that certain roads under the jurisdiction of the cooperator or the Forest Service which serve the National Forest and also carry traffic which serve the National and also carry traffic which is properly the responsibility of the cooperator should be maintained and, if necessary, improved, to a standard adequate to accommodate safely and economically all traffic which uses such roads.
- b. Agree on the identification of roads or road segments which meet the criteria in Item a., by a listing and appropriate maps.
- c. Provide for formal meetings and informal consultation on a regular basis to discuss and agree on action with respect to the roads identified pursuant to Item b.
- d. Provide for regular and adequate maintenance of the roads identified in Item b., including the assignment of maintenance responsibilities.
- e. Provide for entering into project agreements when improvements of a road under the jurisdiction of one party is to be financed in whole or in part from funds or resources provided by the other party.
- f. Provide for appropriate jurisdictional status of roads through transfer of easements and acquisition of easements by the appropriate party.

2. Identification of Roads.

A list of roads and segments of roads which meet the criteria set forth in Item 1a is agreed upon and is marked "Schedule A" and attached as part of this agreement. Schedule A may be modified from time to time by agreement between the cooperator and Forest Service, by adding or removing roads or road segments, or by altering the description of a road or road segment to give it proper identity. Each such modification shall be indicated by a revised Schedule A bearing the signatures of the parties or their authorized representatives and the effective date of the revision.

3. Maintenance Plans.

At the annual meeting provided for in Item 6, plans for maintaining the roads listed in Schedule A shall be agreed upon. Such plans shall include assignment of responsibility for maintenance or particular elements of maintenance to the cooperator or Forest Service for each road or segment of road listed in Schedule A. To the extent practical, and subject to availability of funds, responsibility for maintenance shall be assigned in proportion to use for which each party is properly responsible.

Maintenance shall include preserving and keeping the roads, including structures and related facilities as nearly as possible in their original condition as constructed or reconstructed to provide satisfactory and safe road service.

Maintenance plans shall provide for prompt changes in maintenance assignments during the period of the plan upon agreement by the parties or their designated representatives.

4. Project Agreements.

When improvement of a road listed in Schedule A is to be financed in whole or part from funds or resources provided by the party not having jurisdiction, the parties shall enter into a project agreement providing for performing the improvement work and its financing. A project agreement is not required for improvement of a road or a road segment over which the party performing and financing such improvement has jurisdiction. Project agreements shall be supplements to this general agreement and subject to the agreements, provisions, and conditions herein contained.

- a. A project agreement shall be entered into prior to beginning of improvement or construction work for which a project agreement is required.
- b. The project agreement shall include the following elements:
 1. Identification of road or road segment to be improved or constructed.
 2. Plans and specifications for the project or provision for their development and subsequent agreement thereon.
 3. Schedule of construction or improvement work and designation of the party or parties to perform the work.
 4. Estimates of cost of improvement or construction.
 5. Agreement as to how cost of work is to be borne including arrangements to share in the work or to deposit funds with the performing party for a share of the costs.
- c. If funds are provided by the cooperator in an advance basis for work to be performed by the Forest Service, they shall be deposited in the Treasury of the United States to the credit of cooperative work, Forest Service. Any unused balance of cooperative funds for the purposes outlined in the project agreement shall be returned to the cooperator after completion of the work performed or upon agreement of the Forest Service. If the cooperative funds are made available on a reimbursement basis as the work progresses or upon its completion, the Forest Service shall submit to the cooperator periodic billings, but not more often than monthly, or a final billing as the case may be.

The amount of cooperative funds as set forth in the project agreement shall be the maximum commitment of the cooperator to the project unless changed by a modification of the project agreement.

- d. If funds are provided by the Forest Service for work to be performed by the cooperator the arrangements shall be set forth in the project agreement. Payments to the cooperator shall be made as provided for in the project agreement. If it appears that the project cost may exceed the estimate and additional funds may be needed, no obligation shall arise against the Federal government with respect to the increased cost except by modification of the project agreement prior to incurring any commitment.

5. Rights-of-Way.

Easements or other interests in land acquired by either party shall be adequate to serve the road needs of both parties. The party having jurisdiction of an existing road or intended to have jurisdiction of a road to be constructed shall obtain the needed rights-of-way in its name. There shall be no provisions in any easement document that will prevent the Forest Service from using or authorizing the use of roads for which Federal funds were expended. The cooperator must be in a position to assure the Forest Service the continuance of such uses for the period needed. The party acquiring the easement or other interest in land shall obtain such title evidence and title approval as required in its acquisitions for roads of comparable standards.

The costs of such easements or other interests in land are to be at the expense of the acquiring party.

The Forest Service shall cooperate in the procurement of rights-of-way over land administered by other agencies of the United States required for any project included under this agreement and shall furnish the cooperator copies of survey notes, maps, and other records.

To the extent possible under available authority, each party agrees to convey easements over lands or interests in lands it owns or administers to the other party in order to provide jurisdiction by the appropriate party as may be agreed to for any road or road segment listed on Schedule A.

6. Annual Meeting and Continuing Consultation.

The cooperator and Forest Service shall meet at least once each year to review matters covered by this agreement and to agree on actions to review matters covered by this agreement and to agree on actions to implement this agreement including, but not limited to, (1) approval of changes in the listing of roads on Schedule A; (2) approval of the annual maintenance plan; (3) approval of project agreements for construction or reconstruction; and (4) approval of transfer of jurisdiction of particular roads by easement conveyance. It is also the intent of the parties to arrange for continuing consultation between their representatives with the objective of reaching prompt agreement by the parties on all matters of mutual concern which are covered by this agreement. The Forest Supervisor of the Fishlake National Forest, and County Commissioner _____ for the cooperator shall be responsible for making the arrangements for formal meetings and continuing consultation.

7. Modification and Termination.

- a. This agreement may be modified by mutual consent.
- b. This agreement may be terminated by either party upon at least 30 days prior written notice, except that such termination shall in no way affect or change any commitment made authorizing the use of roads or rights-of-way for purposes for which Federal funds were expended, or any operation in progress at the time of notice, and provided, that such termination shall in no way affect the agreement of the parties hereto with respect to any obligations incurred under the agreement until full settlement has been made.

8. Miscellaneous.

- a. It is understood that any default by a permittee other authorize road user creates no liability on the part of the Forest Service.
- b. Nothing herein contained shall be constructed to obligate the Forest Service or the cooperator beyond the extent of available funds allocated or programmed for this work, or contrary to applicable laws, rules, and regulations.
- c. No Member of, or Delegate to, the Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefits that may arise therefrom, unless it is made with a corporation for its general benefit.

- d. Where applicable, any contract, agreement, or understanding entered into pursuant to this agreement providing for work to be performed shall include the requirements of Federal laws, Executive orders, and Regulations.

This agreement shall be effective as of the date herein written and shall supersede all prior existing agreements, if any, for the same roads.

_____ County Commission

Forest Service
Department of Agriculture

By _____
XXXXXX XXXXXXXXX
Chairman
_____ County Commission

By _____
XXXXXXXXXX XXXXXXXXX
Forest Supervisor
Fishlake National Forest

By _____
XXXXXX XXXXXXXXX
_____ County Commissioner

By _____
XXXXXX XXXXXXXXX
_____ County Commissioner

Schedule A

Forest Development Road Cooperative Agreement Dated _____, 19__
Between the Forest Service and _____ County.

Road Name	Jurisdctn	FDR #	Termini	Miles

Jurisdiction Code

- 1 - County Jurisdiction
- 2 - National Forest Jurisdiction
- A - County Maintenance Responsibility
- B - National Forest Maintenance Responsibility



INSERT

LOCATION MAP(S)



JURISDICTION

Road Management - the maintenance, control, and regulation of use on a transportation system.

Jurisdiction - the legal right to control and regulate the use of a transportation system.

The relationship is simple: an agency can only manage that over which they have jurisdiction. Since jurisdiction is inherent in the right-of-way ownership, it cannot be shared nor can it be conveyed except by property transfer procedures. Jurisdiction is gained through a number of methods. Some of the methods cannot be questioned while others are questioned and often overturned in court. Some agencies, ie. counties, are limited in the methods by which they can gain jurisdiction. Many counties maintain roads that are outside the scope of their authority. The Forest Service cannot enter into cooperative agreements on these questionable roads or otherwise expend money on them.

Jurisdiction by the Forest Service can be gained through the following ways:

1. **Right-of-Way Easement** - When properly executed and recorded, we have unrestricted jurisdiction and can develop, maintain, and control the road.
2. **Condemnation** - Condemnation results in an easement so we have unrestricted jurisdiction and can carry on all activities allowed under a right-of-way easement.
3. **Landownership** - When the Forest Service controls or owns the land containing the road, they have unrestricted jurisdiction over the road.
4. **Donation** - Donation of an easement by means of a deed, when properly recorded, gives the Forest Service unrestricted rights to carry on all activities allowed under a right-of-way easement.
5. **Cost Share** - In areas of intermingled ownership, the Forest Service may jointly develop and maintain a road or road system with private landholders. Easement deeds are exchanged. The Forest Service has jurisdiction over these roads. The cost-share cooperator retains rights to use the roads for his purposes. These roads are considered to be under the unrestricted jurisdiction of the Forest Service.
6. **Appropriation** - Prior to World War II rights-of-way for roads built with Federal funds were obtained by appropriations. A taking by appropriation confers only a right to possession and use upon the Government; title does not transfer until the landowner receives just compensation for the taking. There is a six-year statute of limitations under which the landowner has the right to sue for just compensation. If the landowner fails to sue within the limitations, the right to compensation is lost. At the expiration of the statute of limitations, title would presumably pass to the Government in the event the aggrieved landowner had failed to pursue his cause of action. The road would then come under unrestricted Forest Service jurisdiction. However, a number of these roads have subsequently come under county jurisdiction. The major limitation is the right-of-way width which is limited to the road prism or to the wheel tracks if the road is unimproved. The Forest Service can maintain and use the road but cannot reconstruct it without obtaining an easement from the landowner or defending our appropriation through the courts.
7. **Law of 1866** - Roads built on public domain for public purposes are public roads. A public road existing on public domain that was later reserved as National Forest System land and whose jurisdiction was never assumed by the court is under the jurisdiction of the Forest Service until it has been proven that the road is a public road. If the county built, assumed maintenance responsibilities, or otherwise exercised jurisdiction over such roads, they become county roads.

If the roads were under county jurisdiction, and the right-of-way width is statutorily defined, the Forest Service may enter into a cooperative agreement to improve such roads. Where the right-of-way is limited, a cooperative agreement may not be entered.
8. **Plat Dedication in conjunction with a subdivision.** - When a public road agency formally accepts the donation, roads shown on an accepted subdivision plat are under the unrestricted jurisdiction of the public road agency. The Forest Service can operate and cooperate to the extent allowed under a rights-of-way easement.

9. Petition - Each State has a process through which landholders can petition the county to declare a public road. This process is defined by statutes and generally consists of the following:

- a. Landowners' petition the county commissioners for a County road.
- b. The county commissioners appoint a board of viewers.
- c. The board of viewers review the road.
- d. The viewers make a recommendation to the county commissioners as to the acceptance of the road and compensations to the landowners.
- e. County commissioners declare a county road.

When all phases of the process are completed and recorded in the boards minutes, the road is under county jurisdiction and the Forest Service can cooperate to the same extent as under a right-of-way easement.

10. Declaration - Sometimes a board of county commissioners at the request of landholders will declare a road a county road without following established legal petition process. If the road is maintained for a period of years and/or improved by the county, the county in essence has established a prescriptive right. The major limitation is the right-of-way width which is limited to the road prism or to the wheel tracks if the road is unimproved. The Forest Service can use and perform maintenance for National Forest purposes on such a road, however, cannot enter into a cooperative agreement to improve such a road as jurisdiction is limited to the road prism.

11. Prescriptions - The Forest Service does NOT acquire rights through prescriptive use. However many County, State, and private roads exist through prescriptive use and the Forest Service uses these roads for selective purposes. The Constitution of the United States requires that any private taking for public purposes must be compensated, prescriptive use does not fulfill this requirement. Additionally, the Forest Service must, by law (P.L. 91-646), offer fair market value to a landowner for easements.